Supreme Court, U.S.
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No. 95-924

In The
Supreme Court of the United States
October Term, 1995

L.P. PATTERSON, et al.,
Petitioners,
v.
NATIONSBANK OF TEXAS, N.A.,
TIMOTHY P. HARTMAN
and ROBERT B. LANE,
Respondents.
consolidated with
L.P. PATTERSON, et al.,
Petitioners,
v.
BANK ONE, TEXAS, N.A.,
HARVEY MITCHELL
and RONALD STEINHART,
Respondents.

On Petition for a Writ of Certiorari To the United States Court of Appeals For The Fifth Circuit

BRIEF OF BANK ONE, TEXAS, N.A. HARVEY MITCHELL AND RONALD STEINHART IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the issuance and service of a broad legislative subpoena calling for practically every bank document of a national bank constitute an exercise of state "visitorial power" over a national bank that is prohibited within the meaning of 12 U.S.C. § 484(a)?

2. Is the Comptroller of the Currency's construction of 12 U.S.C. § 484, which prohibits the review and inspection of documents sought by a state legislative committee, a reasonable interpretation of the statute that is entitled to deference by the courts?

LIST OF PARTIES

Pursuant to Rule 29.1, the following names are added to the list of parties appearing at page (ii) and (iii) of the Petition for Writ of Certiorari:

BANC ONE TEXAS CORPORATION
BANC ONE CORPORATION

These corporations are parent companies of Respondent Bank One, Texas, N.A., which has no nonwholly owned subsidiaries.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
STATUTES AND REGULATIONS INVOLVED	2
STATEMENT OF CASE	2
REASONS THE PETITION SHOULD BE DENIED	8
(1) The decision by the Fifth Circuit Court of Appeals is not in conflict with the decision of another court of appeals on the same issue and does not represent an important question of federal law	8
(2) The plain language and legislative history of Section 484 support the Fifth Circuit Court of Appeals' decision	9
(3) The Fifth Circuit Court of Appeals properly gave controlling weight to the OCC's interpretation of visitorial power under Section 484	12
(4) The "plain statement rule" of *Gregory v. Ashcroft* has no application in this case	15
CONCLUSION	17

TABLE OF AUTHORITIES

Page

Atascadero State Hosp. v. Scanton, 473 U.S. 234 (1985) 14

Clarke v. Securities Indus. Ass'n, 479 U.S. 388 (1987) 8

Davis v. Elmira Savings Bank, 161 U.S. 275 (1896) 16

Gregory v. Ashcroft, 501 U.S. 452 (1991) 14

Haig v. Agee, 453 U.S. 280 (1981) 11

National State Bank, Elizabeth, N.J. v. Long, 630 F.2d 981 (3d Cir. 1980) 7, 15

Nations Bank of North Carolina, N.A. v. Variable Annuity Life Ins. Co., 115 S.Ct. 810 (1995) 8, 12, 14

New York State Dept. of Social Services v. Dublino, 413 U.S. 405 (1973) 15

Preston State Bank v. Ainsworth, 552 F.Supp. 578 (N.D. Tex. 1982) 15

TABLE OF STATUTES

12 C.F.R. § 7.6025 (1993) 2, 12

12 U.S.C. § 92a(c) 13

12 U.S.C. § 481 16

12 U.S.C. § 484 ..... *passim*

Riegle-Neal Interstate Banking and Branching Efficiency Act ("Riegle-Neal") Pub.L. No. 103-328 § 102(b) 108 Stat. 2338 (1994) 10

Sup.Ct.R. 10 8

LEGISLATIVE AND ADMINISTRATIVE MATERIALS

S. Rep. No. 97-536, 97th Cong., 2d Sess. 29 (1982) 11

36 Fed. Reg. 17000 (August 16, 1971), as amended at 39 Fed. Reg. 3928 (January 31, 1974) 11

1993 WL 639366 (OCC Interpretative Letter 616, February 26, 1993) (emphasis added) reprinted in Fed. Banking Law Rep. (CCH) at 83, 456 (R.BO. 30-31) 2, 13

1993 WL 740918 (OCC Opinion Letter, June 3, 1993) 2, 14

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TO THE HONORABLE JUSTICES OF THIS COURT:

Bank One, Texas, N.A. ("Bank One"), Harvey Mitchell and Ronald Steinhart (collectively, "Respondents") respectfully submit this their Brief in Opposition to the Petition for Writ of Certiorari filed by Petitioners.

OPINIONS BELOW

The unpublished opinion of the Fifth Circuit Court of Appeals is reproduced at pages A-1 through A-2 of the Appendix to the Petition for Writ of Certiorari (the "Appendix"). The unpublished opinion of the United States District Court for the Northern District of Texas is reproduced at pages A-3 through A-7 of the Appendix.

STATUES AND REGULATIONS INVOLVED

This case involves the following statute and regulation: 12 U.S.C. § 484 and 12 C.F.R. § 7.6025 (1993), which are reproduced at pages A-20 and A-22 through A-23 of the Appendix. This case also involves the following interpretive letters by the Office of the Comptroller of Currency: 1993 WL 740918 (OCC Opinion Letter, June 3, 1993), and 1993 WL 639366 (OCC Interpretive Letter 616, February 26, 1993), which are reproduced at pages A-8 through A-17 of the Appendix.

STATEMENT OF CASE

Bank One is a nationally chartered bank with its principal place of business in Dallas, Texas. The parties do not dispute that as a national bank, Bank One is entitled to protection from the exercise of visitorial powers pursuant to 12 U.S.C. § 484.

On May 24, 1993, State Representative L.P. Patterson, acting as Chairman of the Committee on Agriculture & Wildlife Management, a standing committee of the Texas House of Representatives, issued legislative subpoenas to Mr. Harvey Mitchell, Chairman of the Board of Bank One, and to Mr. Ronald Steinhart, President of Bank One, seeking both the testimony of the recipients and the production of fifteen (15) categories of documents contained in Bank One's books and records. (R.BO. 14-19, 21-26). On May 28, 1993, the subpoenas were served on Messrs. Mitchell and Steinhart through the General Counsel of

Bank One in Dallas County, Texas. (R.BO. 37). In addition to producing the requested documents, the subpoenas ordered Mr. Mitchell and Mr. Steinhart to testify "regarding lending practices toward agricultural and small business interests in rural and urban Texas." (R.BO. 14, 21).

In seeking a Writ of Certiorari, Petitioners argue that issuance of the subpoenas was merely part of a fact finding mission related to agricultural and small business lending practices and was not motivated by a desire to regulate Bank One. Petition p. 3-4. This claim is, at best, disingenuous given that Chairman Patterson has repeatedly attempted to regulate the banking industry in the State of Texas, and large national banks in particular, through the introduction of legislation, including: (1) HB 1223 in the 71st Texas Legislature, which would have required financial institutions having deposits of $250 million to file reports of their financial activities with the Texas Banking Commissioner (R.BO. 19A-20A); (2) HB 236 in the 72nd Texas Legislature, which would have imposed a tax on bank deposits in excess of $300 million, with deductions for loans made in the bank's local service area (R.BO. 22A-25A); (3) HB 537 in the 72nd Texas Legislature, which would have required quarterly reports of deposit and lending activities from banks having deposits in excess of $250 million on a branch-by-branch basis (R.BO. 26A-28A); and (4) HB 584 in the 73rd Texas Legislature, which would have required quarterly reports on a branch-by-branch basis from banks having deposits in excess of $250 million. (R.BO 29A-30A). Although each of these bills failed to pass the Texas Legislature, they reflect repeated attempts to regulate the banking industry by requiring the production of the same information sought by the subpoenas. In this respect, Chairman Patterson's issuance of the subpoenas appears to be a circuitous attempt to regulate national banks through production of their records where direct attempts to achieve this end have been consistently rejected by the Texas Legislature.

Putting aside this background, under any standard the subpoenas were extraordinary in their breadth, seeking to compel the witnesses not only to testify, but to also produce reports with underlying records related to virtually all branch lending of Bank One for thirty-two (32) separate counties for the entire first quarter of 1993.[1] (R.BO. 15, 19, 22, 26). Specifically, the subpoenas required the production of the following categories of documents from each branch location:

(1) "recaps" of all lending activity by Bank One statewide and by branch offices in 32 specified counties through the end of the first quarter of 1993, and all "back-up" detail;

(2) Bank One's credit policy manuals;

(3) Bank One's loan operations procedure manual;

(4) all written standards and definitions that explain Bank One's loan categories;

(5) all documents identifying loans purchased and notes, participations, and shared units purchased or "booked" by Bank One, detailing source location, amount, and type of loan;

(6) documents describing various codes used in Bank One's accounting books, including industrial codes, geographic codes, collateral codes and purpose codes;

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[1] The subpoenas requested Respondents to provide information and documents for each of Bank One's branches in the following Texas counties: Abilene, Amarillo, Athens, Baytown, Brenham, Burleson, Canton, Cedar Park, Cleburne, Commerce, Corsicana, Crosby, Denton, DeSoto, Duncanville, Fredericksburg, Georgetown, Greenville, Levelland, Lewisville, Longview, Mansfield, Marshall, Midland, New Caney, Odessa, Orange, Port Arthur, Sherman, Temple, Waxahachie and Wichita Falls. (R.BO. 19, 26).

(7) documents relating to any telephone surveys of Bank One branch operations regarding small business and agricultural lending;

(8) documents identifying all agricultural and small business loans made by Bank One where the purpose of the loan was not to purchase an automobile or light truck, statewide and by branches in 32 specified counties;

(9) documents identifying all loans made by Bank One for the purchase of raw or unimproved agricultural land, statewide and by branches in 32 specified counties;

(10) documents identifying all loans made by Bank One for agricultural production; and

(11) documents identifying or summarizing Farmers Home Administration guaranteed loan applications and acceptance rates.

(R.BO. 17-19, 24-26). The unrebutted evidence before the District Court showed that much of the information sought by the legislative committee either did not exist or did not exist in the form specified in the subpoenas. (R.BO. 37, 49).

The subpoenas not only sought reports that did not exist, but also sought "detail of back-up listings on which the above recaps are based," which in effect compelled the production of almost every document created in the business of providing loans by each branch office of Bank One in thirty-two Texas counties. (R.BO. 17, 24) When coupled with the scope of the definitions contained in the subpoenas (R. BO. 16, 23), it is difficult to imagine broader and more intrusive requests for production. In this regard, the unrebutted testimony of Dan Kuster, the Senior Vice-President and Director of Corporate Planning for Bank One, offered to the District Court in support of the application for injunction, makes clear the exceptionally burdensome and expen-

sive task that would be required, as a practical matter, for Bank One to comply with the subpoenas:

> The subpoenas demand a massive amount of information. However, it should be realized that our systems contain an even greater amount of raw data. Bank One uses some forty (40) separate data systems, some of which are operated by outside contractors. We would have to search each one to locate the information requested by the subpoenas. Assuming all of the data requested currently existed in the form required and was available, Bank One would still have to expend thousands of staff-hours sifting through all of its data to collect and produce this information. The cost of such production would easily be in the tens of thousands of dollars, and could be over $100,000.00 with the cost of photocopying and reproducing the information costing in the tens of thousands of dollars.
>
> But the information requested simply does not exist in the form the Committee has demanded. For example, because Bank One is not required to report activities on a branch by branch basis under federal regulations, most information is not available on that basis. As a result, Bank One cannot provide most of the requested information in the form specified without substantial additional efforts, including fundamental and very expensive changes to its computing and reporting systems. It is even conceivable that we would need to manually sort through individual loan files to determine if such loans meet the criteria requested by the subpoenas. Bank One would have to divert hundreds of staff-hours to compile the information in the form requested, including substantial time by technicians to effect a conversion in our reporting systems. The cost of this effort could easily exceed $100,000.00.

(R.BO. 48-49). In short, it was undisputed before the District Court that to comply with the subpoenas as drafted would require

Bank One to undertake an extremely invasive, burdensome and expensive task, which would result in the production of virtually all lending records for the requested branches for the first quarter of 1993.

Upon receiving the subpoenas, Bank One filed suit seeking a declaratory judgment that the subpoenas were prohibited and preempted by 12 U.S.C. § 484, which provides as follows:

> (a) No national bank shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice of such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.
>
> (b) Notwithstanding subsection (a) of this section, lawfully authorized State auditors and examiners may, at reasonable times and upon reasonable notice to a bank, review its records solely to ensure compliance with applicable State unclaimed property or escheat laws upon reasonable cause to believe that the bank has failed to comply with such laws.

12 U.S.C. § 484. Because the inspection of bank books and records is a type of "visitorial power" prohibited by subsection (a), and in light of the limited state review of national bank records permitted by subsection (b), Bank One urged that the plain language of Section 484 prohibited the subpoenas. In addition, Bank One urged the District Court to give deference to an interpretive ruling from the Office of the Comptroller of the Currency ("OCC"), and to an OCC opinion letter, both of which construed Section 484 to prohibit the subpoenas.

The parties agreed that the validity of the subpoenas was a question appropriate for disposition as a matter of law and that the matter should be presented to the District Court by way of cross-motions for summary judgment. The District Court granted Bank One's motion for summary judgment, denied the Commit-

tee's cross-motion, and entered judgment in favor of Bank One, declaring the subpoenas void and enjoining their enforcement. The Fifth Circuit summarily affirmed. *See* Appendix p. A-2.

REASONS THE PETITION SHOULD BE DENIED

(1) The decision by the Fifth Circuit Court of Appeals is not in conflict with the decision of another court of appeals on the same issue and does not represent an important question of federal law.

The decision of the Fifth Circuit Court of Appeals is not in conflict with the decision of another United States court of appeals on any matter. Only one federal court of appeals has addressed the issues presented in this case and it has resolved them in a manner consistent with the decisions below. *See National State Bank, Elizabeth, N.J. v. Long,* 630 F.2d 981, 988-89 (3rd Cir. 1980). In *National State Bank*, the Third Circuit followed an OCC interpretive ruling in holding that under 12 U.S.C. § 484 visitorial powers "encompass examination of the bank's books and records." These decisions by the Fifth and Third Circuits are consistent with this Court's recent directive that a reasonable interpretation by the OCC of a banking law should be given "controlling weight." *See Nations Bank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 115 S.Ct. 810, 813-814 (1995); *see also Clarke v. Securities Indus. Ass'n*, 479 U.S. 388, 403-04 (1987) (a reasonable construction by the OCC of the meaning of banking laws entitled to "great weight").

This case also does not present an important question of law that is proper for review by this Court. The Fifth and Third Circuit opinions are separated by sixteen years, thus reflecting the infrequency with which this issue arises. Moreover, the Petitioners are simply unhappy with the application by the Fifth Circuit and the District Court of the doctrine of the plain language of the statute, as well as established rules of deference to be given OCC interpretations of banking laws. *See e.g. Nations Bank of North*

Carolina, N.A. v. Variable Annuity Life Ins. Co., 115 S.Ct. 810, 813-14 (1995). In other words, it is not the principle of law that is at issue; it is the lower courts' application of the legal standard on the particular set of facts of this case that provides the basis for the Petition. Accordingly, Petitioners have not presented compelling reasons for review of their Petition pursuant to Sup. Ct. R. 10 and it should therefore be denied.

(2) The plain language and legislative history of Section 484 support the Fifth Circuit Court of Appeals' decision.

Although both questions presented by Petitioners relate to the reasonableness of the OCC's interpretation of "visitorial powers" under Section 484 and the standard of deference to be afforded such determinations by federal courts, these issues need not be reached because the plain language of the statute and its legislative history prohibits the inspection sought through the subpoenas, which provides a separate basis for upholding the Fifth Circuit's decision.

There is no argument between the parties on the issue of whether Section 484 preempts state law, given Petitioners' concession in the Fifth Circuit that "without question, 12 U.S.C. § 484 is intended to preempt state visitorial powers over national banks." Appellants' Brief p. 25. Petitioners argue, however, that the service of a subpoena by a legislative committee seeking virtually all lending records for thirty-two branches of a national bank in some way does not constitute an exercise of visitorial power. This argument is directly contradicted by the plain language of Section 484, which provides:

> § 484. Limitation on visitorial powers
>
> (a) *No national bank shall be subject to any visitorial powers* except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress or by either House thereof or by any committee of Congress or of either House duly authorized.

> (b) Notwithstanding subsection (a) of this section, lawfully authorized *State auditors and examiners may*, at reasonable times and upon reasonable notice to a bank, *review its records solely to ensure compliance with applicable State unclaimed property or escheat laws* upon reasonable cause to believe that the bank has failed to comply with such laws.

12 U.S.C. § 484 (emphasis added).

Subsection (a) clearly establishes the general rule that national banks are not subject to visitorial powers except in three narrow situations not applicable to the facts of this case.[2] Subsection (b), added by amendment in 1982, creates a further exception to the general rule, specifically allowing inspection by *state* officials of a national bank's records "*solely* to ensure compliance with applicable State unclaimed property or escheat laws. . . ." 12 U.S.C. § 484 (b) (emphasis added). The amended language of this statute indicates that Congress intended to allow the states one narrow exception so that their officials could inspect a national bank's records "solely" for the purpose of ensuring compliance with state unclaimed property or escheat laws. The fact that Congress expressly limited this review as the "sole" exception available to the states under application of the general prohibition on visitorial inspections should end the inquiry. Thus, as a matter of statutory interpretation, Congress has explicitly limited a state's ability to inspect a national bank's books and records and Petitioners' argument that a state legislative committee may somehow avoid the express restrictions contained in Section 484 is directly contradicted by the terms of the statute.[3]

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[2] There is no claim by Petitioners that their proposed inspection is (1) "authorized by *Federal* law;" (2) vested in the courts of justice; or (3) directed by Congress, either House or an authorized committee.

[3] Apparently for the purpose of implicitly undermining the historic protections of the National Bank Act, Petitioners argue that Congress

In addition to the plain language of Section 484, the legislative history of the 1982 amendments to Section 484 also makes clear that Congress intended subsection (b) to create the sole basis for a state's examination of the records of a national bank:

> The bill permits review of national bank records by state auditors and examiners. Such reviews of relevant documentation may be conducted ***solely to determine compliance with applicable state unclaimed property or escheat laws*** if such officials have reasonable cause to suspect that a bank has violated those laws.

S. Rep. No. 97-536, 97th Cong., 2d Sess. 29 (1982) (emphasis added). This legislative history contains no ambiguity. Indeed, its language is almost identical to the language of the statute. Thus, assuming this Court finds it necessary to examine the legislative

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"reaffirmed" in the Riegle-Neal Interstate Banking and Branching Efficiency Act ("Riegle-Neal") Pub.L. No. 103-328 § 102(b) 108 Stat. 2338 (1994), the states "continuing authority over national banks in the areas [of] community reinvestment, consumer protection, fair lending and the establishment of intrastate branches." *See* Petition p. 12. Petitioners' argument is easily dismissed by further review of the provisions of Riegle-Neal, its "Rule of Construction" and its legislative history. First, the statute expressly provides an exception to the language quoted by Petitioners "when Federal law pre-empts the application of such state laws to a national bank," thus evincing Congressional intent to leave untouched all protections created by statutes such as the National Bank Act. Second, the "Rule of Construction" adopted by Congress states: "[n]o provision of this subsection may be construed as affecting the legal standards for preemption of State law to national banks," thus making clear that Congress did not intend to affect the existing standards for preemption. Finally, the legislative history of the statute expressly states that "[f]ederal banking agencies, through their opinion letters and interpretive rules on preemption issues, play an important role in maintaining the balance of Federal and State law under the dual banking systems," which supports the deference given by the lower courts in this case to the OCC's interpretation of Section 484. As a result, Petitioners' reference to Riegle-Neal is simply a "red herring" that does not support review of this case.

history of a plain and clearly written statute, the Petition still should be rejected.

Finally, in construing Congressional intent, it also is important to recognize that the OCC had broadly construed the visitorial power limitation for a long time prior to the 1982 amendments. *See* 36 Fed. Reg. 17000 (August 16, 1971), as amended at 39 Fed. Reg. 3928 (January 31, 1974). The fact that Congress did not act to "set the record straight" while it was amending Section 484 (including the visitorial power limitation language itself) is further evidence that Congress approved of the way the OCC had interpreted the statute. *See Haig v. Agee*, 453 U.S. 280, 300 (1981) ("Congressional acquiescence may sometimes be found from nothing more than silence in the face of an administrative policy").

Accordingly, the congressional intent to prohibit state examinations of a national bank's records is clear from the face of Section 484 and its legislative history and the lower courts properly held the legislative subpoenas to be visitorial, and therefore prohibited, within the meaning of Section 484. As a result, the Petition should be denied.

(3) The Fifth Circuit Court of Appeals properly gave controlling weight to the OCC's interpretation of visitorial power under Section 484.

As Petitioners acknowledge, if the OCC's interpretation of Section 484 defines the term "visitorial powers" in a way that is reasonable in light of the legislature's revealed design, a court should give the administrator's judgment "controlling weight." *See* Petition p. 8-9, quoting *NationsBank v. Variable Annuity Life Ins. Co.*, 115 S.Ct. 810, 813-14 (1995). Thus, Petitioners do not seek to challenge the proper legal standard applied by the lower courts in deferring to the OCC's reading of Section 484; they complain instead about its application on the particular facts present in this case.

In this regard, it is unquestioned that the OCC has construed the limitation on "visitorial powers" contained in Section 484 to mean that all state officials are barred from examining, inspecting, or requiring the production of the records of a national bank except in those instances expressly authorized by Congress:

> The exercise of powers over national banks is vested in the Comptroller of the Currency .... *Other officials,* including state banking officials, *have no authority to conduct examination or to inspect or require the production of books or records of national banks,* except for the limited purpose of ensuring compliance with applicable State unclaimed property and escheat laws [and except with regard to shareholder lists] ....

12 C.F.R. 7.6025(b) 1993) (emphasis added) (incorporating subparagraph (a)). *See* Appendix p. A-22 through A-23.

Indeed, the OCC has consistently construed Section 484 to mean that states have no authority to examine the books of national banks. It recently opined in a February 26, 1993 Interpretative Letter:

> *The few specific, narrow exceptions to the visitation prohibition in 12 U.S.C. § 484(a) evidence an intent by Congress that the OCC exercise nearly exclusive powers upon national banks.* The fact that the States have no general authority to examine the books, records and assets of national banks is further supported by 12 U.S.C. § 92a(c), which expressly permits state authorities a limited right of access to reports of examination prepared by the OCC relating to trust activities of national banks .... *Although there may be no comprehensive definition of 'visitorial' powers, they certainly include the examination of a bank's books and records.*

1993 WL 639366 (OCC Interpretative Letter 616, February 26, 1993) (emphasis added) reprinted in Fed. Banking Law Rep.

(CCH) at 83, 456 (R.BO. 30-31). *See* Appendix p. A-14 through A-17.

In accordance with this OCC policy, on June 3, 1993 (prior to the filing of this lawsuit), the OCC issued an interpretative letter in response to an inquiry from Bank One regarding the legality of the legislative subpoenas at issue in this case. The OCC concluded that the subject subpoenas clearly represented a prohibited exercise of visitorial powers by the Texas state legislature:

> For the reasons given below, *it is our firm conclusion that this represents an attempted exercise of visitorial powers by the state authorities* which conflicts with and is therefore preempted by 12 U.S.C. § 484, the federal statute which specifies and limits the circumstances wherein the books and records of national banks may be examined . . . . *In sum, we do not believe that the Bank is required to comply with the subpoenas in question.* This attempted exercise of visitorial power by local officials is not 'authorized by Federal law', conflicts with the express terms of 12 U.S.C. 484, as historically interpreted and particularly as amended in 1982, and is incompatible with the comprehensive scheme of federal supervision and examination of national banks administered by the OCC.

1993 WL 740918 (OCC Opinion Letter, June 3, 1993) (R.BO. 41-45) (emphasis added). *See* Appendix p. A-8 through A-13. Consequently, given the OCC's consistent interpretation of "visitorial" power to include all examination or inspection of the books or records of a national bank, even by state legislators, the only issue raised by the Petition is whether the OCC's interpretation is "reasonable in light of the legislature's revealed design . . . ." *NationsBank v. Variable Annuity Life Ins. Co.,* 115 S.Ct. 810, 813-14 (1995).

As discussed in section (2) *supra,* not only is the OCC's interpretation of Section 484 a reasonable one, it is the only reasonable interpretation that can be derived from the plain

language of the statute and its legislative history, both of which unambiguously state that reviews of a national bank's records by state officials are permissible "solely to ensure compliance with applicable State unclaimed property or escheat laws ...." 12 U.S.C. § 484(b). As a result, the Petition should be denied.

(4) The "plain statement rule" of *Gregory v. Ashcroft* has no application in this case.

Petitioners argue that the lower courts' decisions are inconsistent with the plain statement rule in *Gregory v. Ashcroft*, 501 U.S. 452 (1991), which held that "[i]f Congress intends to alter the 'usual constitutional balance between the states and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" *Id.* at 460 (quoting *Atascadero State Hosp. v. Scanton*, 473 U.S. 234, 242 (1985)). As Petitioners further acknowledge, the application of this rule, even when properly invoked, turns on an analysis of whether the prohibited state act "goes to the heart of representative government." *Id.* at 461. In this case, Petitioners' argument fails to raise application of the principle under either standard and therefore does not provide a basis for review by this Court.

First, Congress has made "unmistakably clear" on the face of Section 484 its intention to prohibit the review of a national bank's records by state officials, except for the extremely limited purposes of ensuring compliance with state unclaimed property or escheat laws. It is difficult to imagine how Congress could have worded a clearer expression of its intent than by stating that these were the "sole" exceptions to the general prohibition of a state's review of a national bank's records. As a result, even if the "plain statement rule" applied to this case, the wording of the statute clearly expresses congressional intent to prohibit the review sought by the legislative subpoenas. Petitioners even conceded in the Fifth Circuit that "[w]ithout question, 12 U.S.C. § 484 is intended to pre-empt state visitorial powers over national banks." *See* Appellant's Brief at 25.

Second, a conflict can exist between federal and state laws not only in the specific terms of a statute but also in the "practical administration" of the policy upon which the statute is based. *New York State Dept. of Social Services v. Dublino,* 413 U.S. 405 (1973). According to *Dublino,* whenever the application of a state law would "plainly and palpably" interfere with the *policy* underlying the federal law, the state law is preempted. *Id.* The subpoenas at issue in this case not only violate the letter of federal law, their enforcement would also conflict with the underlying purposes behind the National Bank Act and in particular Section 484. The "underlying purpose for the creation of national banks is to provide a uniform and reliable national currency." *Preston State Bank v. Ainsworth,* 552 F.Supp. 578 (N.D. Tex. 1982), *citing Mercantile National Bank v. New York,* 121 U.S. 138 (1887). By making national banks subject to the exclusive visitorial powers of the OCC, Congress intended to protect national banks from duplicative, expensive and wasteful reporting practices that could unreasonably burden them. *See National State Bank v. Long,* 630 F.2d 981, 988 (3d Cir. 1980). The subpoenas issued in this case conflict with the purpose of the National Bank Act because it is clear Congress did not intend to subject national banks to general inquiry by state officials no matter how well intentioned.[4] Congress enumerated only two narrow exceptions to Section 484(a)'s limitation on visitorial powers, thus indicating its intent that no other exists.

Third, the ability of a state legislative committee to inspect the records of a national bank is not among the state decisions that "go to the heart of representative government." To the contrary, national banks are the creation of federal law and are subject to scrutiny by the states only where expressly permitted. Congress has constructed a comprehensive scheme in which the

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[4] If every state legislative committee had the right to subpoena national bank records the duplication, waste and commensurate loss of efficiency in the national banking system would be staggering.

supervision and examination of national banks is made the exclusive responsibility of the OCC. *See* 12 U.S.C. § 481 (giving the Comptroller the right to conduct "thorough examination of all affairs of [a national] bank"). Accordingly, Section 484's prohibition against Petitioners' attempt to review the records of Bank One in no way infringes on state sovereignty. Instead, Petitioners' subpoenas represent an attempt to invade the federal authority to regulate the national banking system. *See Davis v. Elmira Savings Bank*, 161 U.S. 275, 283 (1896) ("an attempt by a state to define [national banks'] duties or control the conduct of their affairs is absolutely void, whenever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the federal government to discharge [their] duties. . . .."). Accordingly, the Petition should be denied.

CONCLUSION

For the preceding reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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